IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 17439 of 2007(A)

PETITIONER:

C.AMINUMMA, W/O.SAIDALAVI,
CHELAT HOUSE, KORANGATH, TIRUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALAKKAD.

2. TIRUR MUNICIPALITY REPRESENTED BY ITS
SECRETARY, TIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.R.SATISH KUMAR
ADV.SRI.ALAXANDER THOMAS, SC, R1
ADV.SRI.T.L.ANANTHA SIVAN, R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.17439 OF 2007

Dated this the 9th day of July, 2007

JUDGMENT

Petitioner was served with Ext.P6 order issued by respondent no.2, Tirur Municipality under Section 406(3) of the Kerala Municipality Act, 1994 directing her to demolish the unauthorized construction effected by her in her property.

2. The above notice was issued on January 5, 2007. This writ petition was preferred in June 2007, with a prayer to issue a writ of mandamus or such other appropriate writ or direction to the respondents, Divisional Railway Manager, Southern Railway and Tirur Municipality "not to dismantle any portion of the building belonging to the petitioner in Ext.P1 property." The other prayer in the writ petition is to issue a direction to respondent no.2 to take a decision on Ext.P8 representation submitted by the petitioner.

3. Ext.P6 order shows that the Municipality had issued a provisional order under Section 406(1) and a show cause notice under Section 406(2) of the Kerala Municipality Act earlier. There is nothing on record to show that petitioner had impugned the

above provisional order. The stand of the Municipality appears to be that the petitioner had not only violated the provisions contained in the Kerala Municipality Building Rules but she had also violated the condition imposed by the Southern Railway in its sanction order by which petitioner was allowed to make certain constructions.

4. It is the case of the Railways that the petitioner had violated the condition that her construction should be within the limit of 12.15 meters from the center line of the nearest railway track. It is contended by the Railways that petitioner has effected constructions within a distance of 10.80 meters from the railway track. Petitioner has refuted the allegations made by the Railways and Municipality. According to her, there is no violation at all and her construction is within the parameters of the rules as well as the condition imposed by the railways. Learned counsel submits that petitioner is prepared to get the property measured with specific reference to the condition relating to the distance clause contained in sanction order issued by the Railway. He further submits that the Municipal authorities may also be directed to conduct a further inspection to ascertain the position.

5. Learned Standing Counsel for the Municipality submits that petitioner had willfully disobeyed the direction issued by the Municipality in this regard and had proceeded with the construction. Therefore, Municipality had issued Ext.P6 notice. It is also contended that the petitioner had rushed to the court without taking recourse to the statutory remedy available to her.

6. In the peculiar facts and circumstances of the case, I am satisfied that petitioner can be granted an opportunity to redress her grievance before the Municipality itself without relegating her to the appellate authority now. Ext.P8 representation is admittedly pending before the Municipality. Therefore, I am of the view that this writ petition can be disposed of with the following directions:

> (a) The officials of the Railway and the Municipality shall conduct a local inspection after giving notice to the petitioner within seven days from the date of receipt of a copy of this judgment. It will be open to the Municipality and the Railway officials to measure the property and find out whether there is any violation of the Building Rules or the conditions imposed by the Railway while granting sanction for construction.

(b) Petitioner shall meet the expenses for the inspection and measurement.

(c) If it is found that the petitioner has violated the Building Rules, it will be open to the Municipality to take action against her in accordance with the Act, Rules and regulations. Similarly, it will be open to the Railways to take appropriate action against the petitioner, if she has violated any of the conditions imposed while granting sanction for construction.

(d) The interim order passed by this court shall remain in force for a period of six weeks from today.

Writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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